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硕 士 学 位 论 文

# 我国刑事强制医疗程序的反思与重构

Reflection and Reconstruction of Criminal Compulsory  
Medical Procedure in China

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## 摘要

据统计,我国目前有精神病人 1600 万人,每年精神病人肇祸肇事数更是上万。但这一数据并未引起重视,我国立法中关于精神病人犯罪后处置的规定寥寥无几,直至 2013 年在新《刑事诉讼法》中以专篇形式引入强制医疗制度。然而,由于对强制医疗制度的意义、内涵缺乏正确认识,该制度实施的两年多来暴露出了一系列的问题,如何在现有法律框架下完善该制度使之真正成为“拯救”犯罪精神病人的利器成为摆在我们面前的一道难题。笔者试图结合我国新《刑事诉讼法》和司法解释的相关规定,结合实践案例对现行强制医疗制度进行分析,在论述该制度存在的理论意义的基础上,提出进一步完善该制度的构想,以使其能在司法实践中发挥应有的作用。

本文共分为四个部分,第一部分是对我国强制医疗制度发展的追溯。主要从历史沿革及新发展两个方面进行论述,通过回顾历史展现我国现行强制医疗制度的发展历程。

第二部分是分析现行强制医疗制度存在的问题及原因。主要是结合实践案例分析我国现行强制医疗制度运行过程中出现的一些问题,并进一步分析这些问题产生的原因。

第三部分是着重论述强制医疗制度的理论根基。主要从法理基础、价值诉求两个层次,保安处分、正当法律程序、人权保障、法律家长主义四个角度入手论述强制医疗制度的性质,突出该制度的理论意义。

第四部分是完善强制医疗程序的制度构想。针对强制医疗制度运行实践中产生的问题提出改进的方案,增强制度的现实操作性与合理性,以程序的有效运行来实现强制医疗保障人权和防卫社会的内在统一。

**关键词:** 强制医疗; 保安处分; 人权保障

## **Abstract**

According to statistics, there are a total number of 16 million mental patients in China currently and there are tens of thousands of the accidents induced by the mentally ill every year. However, this data has not been attached importance and the provisions of the criminal law on the disposal of mental patients in our country are very few until the compulsory medical procedure was introduced into the new Criminal Procedure Law. However, due to the lack of correct understanding of the meaning and connotation of compulsory medical procedure, a series of problems has exposed for more than two years. How to improve the system under the existing legal framework to save the mentally ill from committing crimes has become a challenge in front of us. Combining the new criminal procedure law and the judicial interpretation of the relevant provisions, the author tries to analyze the current compulsory medical procedure with practical cases, discusses the theoretical significance of this procedure and further puts forward the idea of improvement in order to promote a better role of compulsory medical treatment in the judicial practice.

This paper is composed of four parts, among which the first part is about the trace of compulsory medical procedure in China which elaborates through historical evolution and new development perspectives and which reveals the development of compulsory medical procedure in China by reviewing history.

The second part is the analysis of the existing problems and the reasons for the compulsory medical treatment system. Through combining practical cases, this paper analyzes the problems of compulsory medical occurred during the operation of the system, and further analyzes the causes of these problems.

The third part focuses on the theoretical foundation of compulsory

medical system. Starting from security measures, due process, human rights protection and legal paternalism, this paper discusses the nature of the system and highlights the theoretical significance of the system from the legal basis and the value of demands.

The fourth part is to improve the conception of the system. In view of the problems in the practice of compulsory medical treatment system, the paper puts forward the perfect scheme, which makes the system more practical and reasonable. The effective operation of the system can realize the internal unity of protection of human rights and defense of community.

**Key words:** compulsory medical; security measures; protection of human rights

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## 引 言

近年来，我国经济始终保持高速增长，人们的物质生活水平不断提高，但快节奏、高要求的工作和生活也使得人们精神生活的压力逐年提升，由此导致的精神健康问题愈发严重，精神病人犯罪率居高不下。精神病人犯罪通常手段残忍，危害后果严重，且其人身危险性大，容易对他人人身和财产安全造成严重的威胁。因此就出现这样一个局面：由于无法对其追究刑责，精神病人被用锁链等粗暴方式限制人身自由。但事实上，用暴力控制精神病人人身自由的效果并不理想，精神病人犯罪的恶性事件仍屡屡见报。面对一个个惨案的发生，面对血淋淋的现实，人们开始认识到我国精神病人犯罪立法上的不足，呼吁刑法应当与时俱进，给予精神病人适当的刑罚或是治疗。如何最大程度降低精神病人犯罪率并依法保障精神病人合法权益，提高精神病人康复率及回归社会率成为当前需要研究的重要课题。为顺应时代发展，立法机关在 2013 年新修订的《刑事诉讼法》中引入精神病人强制医疗程序，对强制医疗的适用主体、适用条件、审理程序、救济措施、解除与事后监督等做出了规定，具有里程碑式的意义。2014 年，我国《精神卫生法》也正式颁布实施，该法对在特定情况下精神障碍患者的非自愿住院医疗做出了规定，体现了立法的进步。<sup>①</sup>

《刑事诉讼法》中以专篇形式规定强制医疗制度及《精神卫生法》的颁布体现了我国立法在强制医疗制度建立方面所做的努力和探索，值得肯定。然而，我们也应当看到《精神卫生法》的适用对象有限、《刑事诉讼法》中短短的 6 条规定常使法官在纷繁复杂的司法实践中遭遇“巧妇难为无米之炊”的尴尬。显然，立法不可能一蹴而就，我国刑事强制医疗程序的立法仍不够详尽，需要加以改进和完善。本文通过回顾我国强制医疗立法进程，在分析典型案例的基础上总结出当前实践中遇到的重点、难点问题，在夯实理论研究的基础上，构建出一套既保障犯罪精

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<sup>①</sup>张倩.论我国刑事强制医疗的程序规制（硕士学位论文）[D].广州:华南理工大学,2014.1-2.

神病人合法权益又维护社会安定团结的强制医疗制度，以期使我国强制医疗程序更为完善，更有利于发挥其功效。

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